IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6328 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANWARMIYAN M KHOKHAR

Versus

DIST PRIMARY EDUCATION OFFICER

Appearance:

MR NK MAJMUDAR for Petitioner

MR RA MISHRA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 3, 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 8/12/2000

CAV JUDGEMENT

The petitioner is serving as Primary School Teacher. He approached this Court in the year 1989 with a prayer that being holder of qualification of B.A., B.Ed, he should be treated as a trained Primary School

Teacher and be paid salary in that status at par with other teachers employed in the Panchayat service of the state. On an application for interim relief, the Learned Single Judge, Justice Kundan Singh passed an order on 11.9.1998 directing the respondent no.3 Director of Education to consider the representation of the petitioner for the payment of salary to him as trained primary school teacher. pursuant to the directions made by the Learned Single Judge (Kundan Singh, J), the respondents representing the Panchayat services of the State passed an order on 31.7.99 taking a decision to grant scale of pay of trained primary teachers to all teachers possessing B.Ed degree w.e.f.1.2.1997. The above fact has also been reiterated by the District Primary Education Officer, respondent no.1 herein in his reply affidavit wherein it has been stated that in accordance with the government resolution dated 10.7.99 all primary school teachers with B.Ed qualification shall be granted pay scale of trained teacher and the resolution will be implemented w.e.f. 1.12.1997.

2. Learned Counsel Shri N.K.Majmudar very fairly brought to the notice of this Court the legal developments that took place during the long pendency of this petition. It is submitted that the Government had been treating only such teachers who had passed primary teachers certificate examination as trained teachers. No recognition was given to higher qualifications of the teachers like B.Ed. In 2 single bench decisions of this Court in Satishchandra Bhailalbhai Shah & Others Vs. State of Gujarat reported in 1984(1) GLR Page 65 and in Special Civil Application NO. 2903 of 1998 decided on 6.2.1996, a view was taken by this Court that the primary teachers possessing higher qualifications like B.Ed cannot be denied the status of trained primary teacher and deprive them of the pay-scale at par with other trained primary teachers with certificate qualifications. When this similar subject matter came up for consideration before the third Single Judge of this Court, a reference was made to the larger bench for deciding the question of parity between teachers with B.Ed. qualifications and teachers with primary teachers certificate examination.

3. The Division Bench comprising Justice B.C.Patel & Justice P.B.Majmudar in Special Civil Application No. 4005 of 1987 decided on 20/21-6-2000 after examining the nature of training imparted for awarding degree of B.Ed and primary teachers certificate examination came to a conclusion that a special training to impart education to children at the primary education level can be insisted

upon by the Government and the Educational Authorities to treat teachers in primary school as trained. The Division Bench took a view that higher qualifications like B.Ed can rightly be held to be not suitable for imparting education to children at primary education level and for that a specialised training is imparted in primary teachers certificate training course. The Division Bench therefore overruled the decision of the 2 single benches supra. In view of the above Division Bench decision in the case of Jayantigar S Gosai Vs. State of Gujarat, the Learned Counsel rightly submitted that it is no longer open to him to urge before me sitting singly that B.Ed qualifications possessed by the petitioner should be held as equivalent to or higher than the P.T.C. qualifications for primary teachers.

4. Learned Counsel merely restricted his prayer to seeking a direction from this Court to implement the decision already taken by the Government by its resolution dated 10.7.1999 to grant primary teachers with B.Ed qualifications the same scale of pay as the other trained teachers with Primary Training Certificate qualifications from 1.12.1997. The above prayer made on behalf of the petitioner is not opposed by the respondents in view of the fact that pursuant to the interim directions of this Court, a decision has already been taken by the Government to grant pay scale of trained primary teacher to the petitioner from 1.12.1997. The second submission made by the Learned Counsel on behalf of the petitioner is that in view of the resolution of the Government dated 10.7.1999 to grant pay scale of trained teacher to the petitioner with B.Ed qualifications from 1.12.1997, there is no justification not to give him that status and salary from the initial date of his acquiring B.Ed qualification i.e. from the year 1983. The second prayer made on behalf of the petitioner cannot be accepted for the simple reason that the Division Bench in the case of Jayantigar S Gosai (Supra) has upheld the classification of primary teachers with P.T.C. qualifications which is found suitable for primary school children and teachers with higher qualification like B.Ed for disparity in the scale of pay. In view of the Division Bench Jayantigar S Gosai (Supra), this Court cannot direct the respondents on the basis of their resolution dated 10.7.1999 to grant pay scale of trained primary teacher to the petitioner from the year 1983 as prayed on his behalf.

5. So far the future disparity is concerned, it is reported that the Government has already taken a decision to remove the disparity in the pay scale of Primary

Teachers with PTC qualification and others with B.Ed qualifications. The petitioner however cannot be given the relief of higher scale of pay between 1983 to 1.12.1997 for which there is justification recognised by the Division Bench of this Court. For the aforesaid reasons, the petition only partly succeeds by directing the respondents to implement their own resolution dated 10.7.99, (a copy of which has been annexed with the reply affidavit) and grant scale of pay applicable to trained primary teachers, to the petitioner from 1.12.1997. Let appropriate orders in that behalf be passed and the arrears payable on re-fixation of his salary as primary trained teacher from 1.12.1997 be worked out and paid to him within a period of 3 months from the date of receipt of certified copy of this order. Rule made absolute. In the circumstances, I make no orders as to costs.

(D.M.Dharmadhikari, CJ)

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